

THE HONORABLE MARY JO HESTON

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

SARAH HOOVER,

Debtor.

SARAH HOOVER,

Plaintiff,

vs.

QUALITY LOAN SERVICE CORPORATION
OF WASHINGTON, PHH MORTGAGE
CORPORATION D/B/A PHH MORTGAGE
SERVICES, HSBC BANK USA, N.A., AS
TRUSTEE OF THE FIELDSTONE
MORTGAGE INVESTMENT TRUST,
SERIES 2006-2, NEWREZ, LLC, AND IH6
PROPERTY WASHINGTON, L.P. D/B/A
INVITATION HOMES

Defendants.

Chapter 13

Case No.: 19-42890-MJH

Adversary No.: 20-04002-MJH

DEFENDANTS PHH MORTGAGE
CORPORATION, HSBC BANK USA,
N.A., AS TRUSTEE OF THE
FIELDSTONE MORTGAGE
INVESTMENT TRUST, SERIES 2006-2
AND NEWREZ, LLC,'S AMENDED
ANSWER AND AFFIRMATIVE
DEFENSES TO AMENDED
COMPLAINT

Defendants PHH Mortgage Corporation ("PHH"), HSBC Bank USA, National
Association, as Trustee of the Fieldstone Mortgage Investment Trust, Series 2006-2 (the

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“Trust”) and NewRez, LLC (“NewRez”; together with the Trust and PHH, the “Defendants”) answer Plaintiff’s Amended Complaint [Dkt. 7] as follows:

I. Jurisdiction and Venue

1. Defendants admit that this Court has jurisdiction.
2. Defendants admit that this Court is the proper venue.

II. Jurisdiction and Venue

3. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 3 and therefore deny the same.

4. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 4 and therefore deny the same.

5. Admitted.

6. Admitted.

7. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 7 and therefore deny the same.

8. Denied. The Trust is a trustee. Admitted as to the location of HSBC Bank USA’s principal executive office.

9. Denied. The relationship between the Trust and PHH is set forth in the power of attorney provided from the Trust to PHH.

10. Admitted.

11. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 11 and therefore deny the same.

12. Defendants do not have sufficient information or knowledge to admit or deny the

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allegations in paragraph 12 and therefore deny the same.

III. Factual Background

13. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 13 and therefore deny the same. PHH denies the allegation that it was unwilling to work with Plaintiff.

14. Admit a foreclosure sale of the real property (the "Property") was scheduled for September 13, 2019. The Court file speaks for itself. Otherwise, denied.

15. Denied.

16. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 16 and therefore deny the same.

17. Admit.

18. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 18 and therefore deny the same.

19. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 19 and therefore deny the same.

20. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 20 and therefore deny the same.

21. Defendants do not have sufficient information or knowledge to admit or deny the allegations in paragraph 21 and therefore deny the same.

22. Defendants admit that Ocwen Loan Servicing, LLC nka PHH is the servicer of the Loan. Defendants further admit that payments were made on the Loan until 2018. Otherwise, denied.

23. Denied.

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1 24. The assumption documents Ocwen Loan Servicing, LLC and PHH circulated speak for
2 themselves and any responses thereto by Plaintiff or Leo Hoover also speak for themselves.
3 Otherwise, denied.

4 25. The Notice of Trustee's Sale speaks for itself. Any characterization of that Notice of
5 Trustee's Sale is therefore denied.

6 26. The documents Plaintiff sent relating to assumption of the Loan speak for themselves.
7 PHH fka Ocwen Loan Servicing, LLC was the servicer of the Loan in June 2019. Otherwise,
8 denied.

9 27. Denied.

10 28. Denied.

11 29. The documents informing Plaintiff that she had not submitted all required information
12 for an assumption speak for themselves as do the call records between Plaintiff and PHH or
13 Plaintiff and Ocwen Loan Servicing, LLC. Otherwise, denied.

14 30. Defendants do not have sufficient information or knowledge to admit or deny the
15 allegations in paragraph 30 and therefore deny the same.

16 31. Defendants do not have sufficient information or knowledge to admit or deny the
17 allegations in paragraph 31 and therefore deny the same.

18 32. Defendants do not have sufficient information or knowledge to admit or deny the
19 allegations in paragraph 32 and therefore deny the same.

20 33. Defendants do not have sufficient information or knowledge to admit or deny the
21 allegations in paragraph 33 and therefore deny the same.

22 34. Defendants do not have sufficient information or knowledge to admit or deny the

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1 allegations in paragraph 34 and therefore deny the same.

2 35. The Court file speaks for itself. Otherwise, denied.

3 36. Admit the arrearage amount and the sale amount of the Property. Otherwise, denied.

4 37. The document referenced in Paragraph 37 speaks for itself although the version attached
5 as Exhibit B to the Amended Complaint does not include a time stamp for a fax. Otherwise,
6 denied.

7 38. Defendants do not have sufficient information or knowledge to admit or deny the
8 allegations in paragraph 38 and therefore deny the same.

9 39. Admit that PHH did not instruct Quality to postpone or cancel the sale. Admit the
10 Property was sold to IH6 Property. Otherwise, denied.

11 40. Defendants do not have sufficient information or knowledge to admit or deny the
12 allegations in paragraph 40 and therefore deny the same.

13 41. Defendants do not have sufficient information or knowledge to admit or deny the
14 allegations in paragraph 41 and therefore deny the same.

15 42. The document referenced in Paragraph 42 speaks for itself. Otherwise, Defendants do
16 not have sufficient information or knowledge to admit or deny the allegations in paragraph 42
17 and therefore deny the same.

18 43. Defendants admit that QLS issued the Trustee's Deed to IH6 Property on September 17,
19 2019. Otherwise, denied.

20 44. The document referenced in Paragraph 44 speaks for itself. Otherwise, Defendants do
21 not have sufficient information or knowledge to admit or deny the allegations in paragraph 44
22 and therefore deny the same.

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1 45. Defendants do not have sufficient information or knowledge to admit or deny the
2 allegations in paragraph 45 and therefore deny the same.

3 46. Admit the sale generated a surplus in the amount of \$167,407.96. Otherwise, Defendants
4 do not have sufficient information or knowledge to admit or deny the allegations in paragraph
5 46 and therefore deny the same.

6 47. Denied.

7 48. Defendants do not have sufficient information or knowledge to admit or deny the
8 allegations in paragraph 48 and therefore deny the same.

9 49. Defendants deny on the basis the averment is vague and does not appear to be asserting
10 a fact.

11 50. Defendants do not have sufficient information or knowledge to admit or deny the
12 allegations in paragraph 50 and therefore deny the same.

13 51. Defendants do not have sufficient information or knowledge to admit or deny the
14 allegations in paragraph 51 and therefore deny the same.

15 52. The letters referenced speak for themselves. Otherwise, denied.

16 53. Defendants do not have sufficient information or knowledge to admit or deny the
17 allegations in paragraph 53 and therefore deny the same.

18 54. Denied.

19 55. The document referenced in Paragraph 55 speaks for itself. Otherwise, denied.

20 56. Denied.

21 57. The Court file speaks for itself. Otherwise, denied.

22 58. Denied.

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1 **IV. Causes of Action**

2 **Count I – Violation of the Automatic Stay**

3 59. Defendants reincorporate by reference its answers as set forth in paragraphs 1 through
4 58 above.

5 60. Denied.

6 61. Denied.

7 62. Defendants do not have sufficient information or knowledge to admit or deny the
8 allegations in paragraph 62 and therefore deny the same.

9 63. Defendants do not have sufficient information or knowledge to admit or deny the
10 allegations in paragraph 63 and therefore deny the same.

11 64. Defendants do not have sufficient information or knowledge to admit or deny the
12 allegations in paragraph 64 and therefore deny the same.

13 65. Denied.

14 66. Denied.

15 67. Denied.

16 68. Denied.

17 69. Denied.

18 **V. Conclusion**

19 Defendants deny any allegations set forth in this section.

20 **Affirmative Defenses**

- 21 1. The Complaint fails to state a claim for relief upon which relief can be granted;
22 2. The subject property was not part of the Plaintiff's bankruptcy estate and the trustee's

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1 sale did not violate the automatic stay;

2 3. Under the terms of the Deed of Trust of Mr. Suleiman, Plaintiff did not assume the Loan
3 before she filed for bankruptcy;

4 4. Under the terms of the Deed of Trust of Mr. Suleiman, Plaintiff did not become a
5 successor in interest to the Loan before she filed for bankruptcy;

6 5. Plaintiff lacks standing;

7 6. Plaintiff has waived her ability to challenge the trustee's sale;

8 7. Plaintiff is estopped from challenging the trustee's sale;

9 8. Defendants are entitled to an order annulling the automatic stay.

10 9. Defendants reserve the right to add any further affirmative defenses.

11 Wherefore, Defendants pray for the following relief:

12 **Prayer for Relief**

13 1. An order dismissing Plaintiff's complaint with prejudice;

14 2. An order confirming the subject property was never part of the Plaintiff's bankruptcy
15 estate and/or an order annulling any stay that may have applied;

16 3. An order validating the trustee's sale of the subject property;

17 4. Costs and attorneys' fees; and

18 5. Such further relief as the Court may deem just and proper.
19
20
21
22

1 Dated: March 11, 2020.

2 **HOUSER LLP**

3 By: s/ Ryan S. Moore

4 s/ Robert W. Norman, Jr.

5 Ryan S. Moore (WSBA 50098)

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9 Attorneys for Defendants PHH Mortgage

10 Corporation d/b/a PHH Mortgage

11 Services, HSBC Bank USA, N.A., as

12 Trustee of the Fieldstone Mortgage

13 Investment Trust, Series 2006-2 and

14 NewRez, LLC

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CERTIFICATE OF SERVICE

I the undersigned declare as follows: I am over the age of 18 years and am not a party to this action. On March 11, 2020, I served the foregoing document(s): DEFENDANTS PHH MORTGAGE CORPORATION, HSBC BANK USA, N.A., AS TRUSTEE OF THE FIELDSTONE MORTGAGE INVESTMENT TRUST, SERIES 2006-2 AND NEWREZ, LLC,'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT in the manner described below:

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1 I declare under penalty of perjury under the laws of the United States of America that
2 the foregoing is true and correct.

3 Dated: March 11, 2020

4 s/ Shawn Williams
Shawn Williams

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